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IN THE

Supreme Court of the United States

No. 71-415

COLORADO RIVER WATER CONSERVATION DISTRICT,
Petitioner,

v.

ROCKY MOUNTAIN POWER COMPANY, *et al.*,
Respondents.

RESPONSE OF PETITIONER TO THE MEMORANDUM OF THE UNITED STATES AS *AMICUS CURIAE*

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The purpose of this memorandum is to bring to the attention of the Court events believed important in connection with this proceeding which have occurred since the filing by the United States of its Memorandum *Amicus* in support of certiorari.

As the Government's memorandum notes, as a consequence of this Court's holdings in *United States v. District Court for Eagle County*, 401 U.S. 520, and *United States v. District Court for Water Division No. 5*, 401 U.S. 527, the United States is now involved in the proceedings in Water Division No. 5 in Colorado, having filed a substantial number of claims to the use of water on December

31, 1971, the last day on which filings could be made under the controlling Colorado statute. Pursuant to that statute, objectors had until the end of February 1972 to file in opposition. There have now been filed some 60 statements of objection to the claims of the United States in Water Division No. 5 alone.

One of the Federal claims on which objections have been filed relates to water rights for the identical water and power supply project "for impending oil shale development" (Pet. App. C-2) which is the subject matter of these proceedings. The United States not only claims the identical date which the District sought below but also claims it, based on the identical activity and the identical reports proved up by the District using Bureau of Reclamation witnesses, in the proceedings below.

Because the holding on which review is sought here is identical to that presented in the *Four Counties* case (see U.S. Memorandum *Amicus*, p. 3), this Court should know that the United States has also filed claims in Water Division No. 5 for water essential for the proposed Middle Park project, again utilizing the same claims advanced by the Districts in the *Four Counties* cases which are also based on the same or similar evidence adduced by the Districts when they attempted to adjudicate such rights.

There are of course a great variety of objections made in Water Division No. 5 to the numerous water claims of the United States. Of relevance here, however, with relation to claims for projects planned by the United States Bureau of Reclamation as within the contemplation of the Colorado River Storage Project Act, the objections are predicated in substantial part on the efforts already made by the District. It is argued that the District acted in privity with the United States, or in a trustee capacity; that the United States in effect previously participated in claiming conditional water rights for these projects; that conditional rights were granted to "trustees" like the District; and therefore

the United States is now estopped from seeking a second water right for such projects.

Whatever the merits of these and other arguments, of overriding importance here, regardless of the basis for opposition by the same groups which opposed the District below, is the clear and obvious fact that the trial court is foreclosed by the rulings of the Supreme Court of Colorado in *Four Counties* and in the instant case which, very simply, held that there could be no priority accorded as of the date claimed because the United States had clearly not done sufficient work to evidence an intent, nor sufficient work to qualify even for a conditional right to use water for these projects. Thus, the United States cannot prevail in these claims and the activity and delays which will result from only these two instances should be obviated through a review of the holdings below now.

We would point out that the Solicitor General considers review warranted even without reference to these new developments. It is urged that these new developments make review even more pressing and meritorious.

Respectfully submitted,

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